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COUNSELORS AT LAW

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WASHINGTON, D.C. 20037

202-857-2946

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**JUN - 7 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**AARON P. SHAINIS**  
202-857-2942

**LEE J. PELTZMAN**  
202-857-2943

FACSIMILE  
202-857-2900

June 7, 1993

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, D. C. 20554

Re: MM Docket No. 93-71  
RM-8134

Dear Ms. Searcy:

On behalf of Circle S Broadcasting Co., petitioner in the above-captioned proceeding, transmitted herewith are an original and four (4) copies of its "Reply."

Should any questions arise concerning this matter, please communicate with the undersigned.

Sincerely yours,

*Aaron P. Shainis*

Aaron P. Shainis

Counsel for

CIRCLE S BROADCASTING CO.

Enclosure

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JUN - 7 1993

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Amendment of Section 73.202(b) )  
FM Table of Allotments )  
FM Broadcast Stations )  
(Wickenburg, Arizona) )

MM Docket No. 93-71  
RM-8134

To: The Commission

**REPLY**

Circle S Broadcasting Co. ("Petitioner"), permittee of Station KMEQ(FM) (formerly KFMA(FM)), Channel 229A, Wickenburg, Arizona, submits its Reply to the "Comments Filed By the Vulture Peak Restoration Group," "Addendum to Comments Filed By the Vulture Peak Restoration Group," and "Motion" adopted by the Wickenburg Town Council. In support, the following is respectfully submitted.

Petitioner seeks authorization to substitute Channel 231C3 for Channel 229A and modification of its authorization to specify operation on the higher powered channel. On May 21, Petitioner filed Comments addressing the concerns stated by the Commission in the Notice

unless the "reallocation is conditioned upon removing the existing tower for Station KTIM(AM) and relocating any proposed tower to a new location at or beyond an 11.6 mile radius of Wickenburg." Comments at p. 1. Vulture claims to be an "ad hoc organization of local Wickenburg citizens and homeowners in whose vicinity the present 499 foot tower of Station KTIM(AM) is located." Id. Vulture claims that its group represents at least 400 to 500 people. Vulture claims standing because "due to the economic and aesthetic impact upon members of the Group of both the existing and proposed towers, it and its members have been and continue to be adversely affected and thus, are parties in interest." Comments at p. 2. Vulture urges that the proposed allocation not be approved unless the existing KTIM 499 foot tower is dismantled as a condition to the allocation. Vulture argues that the 499 foot tower should not have been authorized without an environmental assessment, under Sections 1.1301-1.1317 of the Commission's rules.

Vulture argues that before any allocation be made, Petitioner should be required to undertake an environmental assessment showing that its proposed tower at the requisite height would be environmentally defensible. Vulture also states that the current 6 kw power operation of Station KFMA(FM) produces interference on television channels 8 and 10. It argues that

Commission and the Federal Aviation Commission that the request from Circle S Broadcasting Company to construct an 841 foot radio tower, be denied based on FAA regulations with regard to obstructions.

Circle S Response:

With respect to the arguments by Vulture, attached to the instant submission is a June 2, 1993, letter to Harold Shumway, President of Circle S Broadcasting Company, Inc., from R. A. (Pete) Peterson, a member of the Wickenburg Town Council. Mr. Peterson states, inter alia, the following:

1. Contrary to the filings, there has not been a public outcry in opposition to your present tower site or your proposed changes. There has been an orchestrated effort from a small minority who have chosen to oppose you. Generally, it is my perception that a majority of people wish you well and hope for you to continue the services you are making to the community.
2. Contrary to the filings, the present site was thoroughly reviewed by not only the local officials, but it went through the County Planning and Zoning Commission and a positive vote from the Board of Supervisors, in an open public meeting.
3. The claim of 400-500 people being involved in the "Committees" [Vulture's] efforts, lacks substantiation. The committee appears to be overstating their support and some of the sub-groups do not even exist to my knowledge. Further, Flying E Ranch, Rancho de los Caballeros, Kay El Bar Ranch and Country Club Acres are not even within the town limits. The "committee" appears to be exaggerating their influence.
4. The characterization of the Town Council's vote as 'unanimous with those voting' does not reflect the actual situation. Of the seven council members present, only four voted for the motion. I abstained because of my personal involvement with the situation, but two other council members abstained because they did not think the matter was jurisdictional, as did one member of the Airport Advisory Commission. The actions were far from unanimous.

5. When the recent tower was activated, the former tower in town was dismantled. Wickenburg, therefore, has still only one radio tower, hardly spoiling the entire environment. A second tower, if necessary to accommodate a power increase, several miles from the city limits, does not appear to be a burden on the aesthetics of our community. Even the opposition realized in their filings the benefits a radio station operation offers the communities it serves.

It is evident from the foregoing that the extent of the "Vulture Group," both in size and in influence, has been grossly exaggerated.

With respect to Vulture's urging that the proposed allocation not be approved unless the "existing KTIM 499 foot tower be dismantled," such a condition is beyond the jurisdiction of the Commission to impose. In this regard, KTIM is a licensed facility. Accordingly, dismantling the tower would occasion the cessation of broadcast service by KTIM. Clearly, the Commission does not have the jurisdiction to require KTIM to cease operation in order for the allocation of KMEO to be granted absent a showing that technical reasons, not evident here, would preclude the operation in question.<sup>1/</sup>

Moreover, the assertion by Vulture that the KTIM 499 foot tower should not have been authorized without an environmental assessment, under Sections 1.1301-1.1317 of the Commission's rules is speculative. Moreover, it asks for reconsideration well beyond the time limits for such an action. In this regard, Petitioner, in 1991, was granted authority by the Commission to construct the current KTIM tower (BP-911023AC). Moreover, Vulture now states in its Objection that Petitioner should undertake an Environmental Assessment showing that its proposed tower would be environmentally defensible. Totally absent from Vulture's

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<sup>1/</sup> Since KTIM is an AM facility and KMEO is an FM facility, it is hard to imagine a technical preclusion.

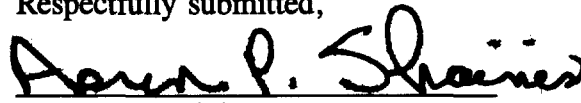
submission is any case to support such a novel showing. Clearly, Circle S will be required to


aware, any potential interference by the operation of the station must be addressed by the licensee.

Of special puzzlement to Petitioner is the purported jurisdiction of the Town of Wickenburg. In this regard, the tower is proposed to be 11.6 miles outside the limits of the Town of Wickenburg. Accordingly, the jurisdiction of the Town of Wickenburg is non-existent relative to this matter. Thus, the submission of the Town of Wickenburg should be given no weight relative to the Commission's deliberations. In this regard, moreover, as demonstrated, the dismantlement of the KTIM tower is beyond the purview of the Commission in consideration of the upgrade. Clearly, it is not in the public interest to have a cessation of broadcast service. Moreover, all aeronautical concerns will be handled in the ordinary course of the application process.

In view of the foregoing, it is respectfully urged that the Commission grant Circle S Broadcasting Company's Petition seeking the substitution of Channel 231C3 for Channel 229A at Wickenburg, Arizona.

Respectfully submitted,

  
Aaron P. Shainis

  
Lee J. Peltzman  
Counsel for  
CIRCLE S BROADCASTING CO.

SHAINIS & PELTZMAN  
Suite 500  
1255 23rd Street, N. W.  
Washington, D. C. 20037  
202/857-2946

June 7, 1993

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R. A. (Pete) Peterson, Councilmember

## TOWN OF WICKENBURG

P. O. Box 1269 Wickenburg, Arizona 85358 (602) 684-5451

June 2, 1993.

Mr. Harold Shumway, President  
Circle S Broadcasting Company, Inc.  
Drawer Y  
Wickenburg, Arizona 85358

Dear Harold:

I have had the occasion to review filings by the Town of Wickenburg, and by a previously unknown group styled "the committee for restoration of Vulture Peak"...and desire to point out what I feel are a few ingenuous arguments they are making.

As you know, I have been a participant in the long history of broadcasting in Wickenburg. As a teenager, I was a disc jockey at the first licensed facility KAKA back in 1962. I returned to Wickenburg in 1978 as station manager of then - KSWW. I was a successful applicant for the FM frequency allocated to Wickenburg, and I am presently employed part-time with your operation.

I am also a member of the Wickenburg Town Council, and feel compelled to set the record straight from my perspective as to the following items:

1. Contrary to the filings, there has not been a public outcry in opposition to your present tower site or your proposed changes. There has been an orchestrated effort from a small minority who have chosen to oppose you. Generally, it is my perception that a majority of people wish you well and hope for you to continue the services you are making to the community.
2. Contrary to the filings, the present site was thoroughly reviewed by not only the local officials, but it went through the County Planning and Zoning Commission and a positive vote from the Board of Supervisors, in an open public meeting.

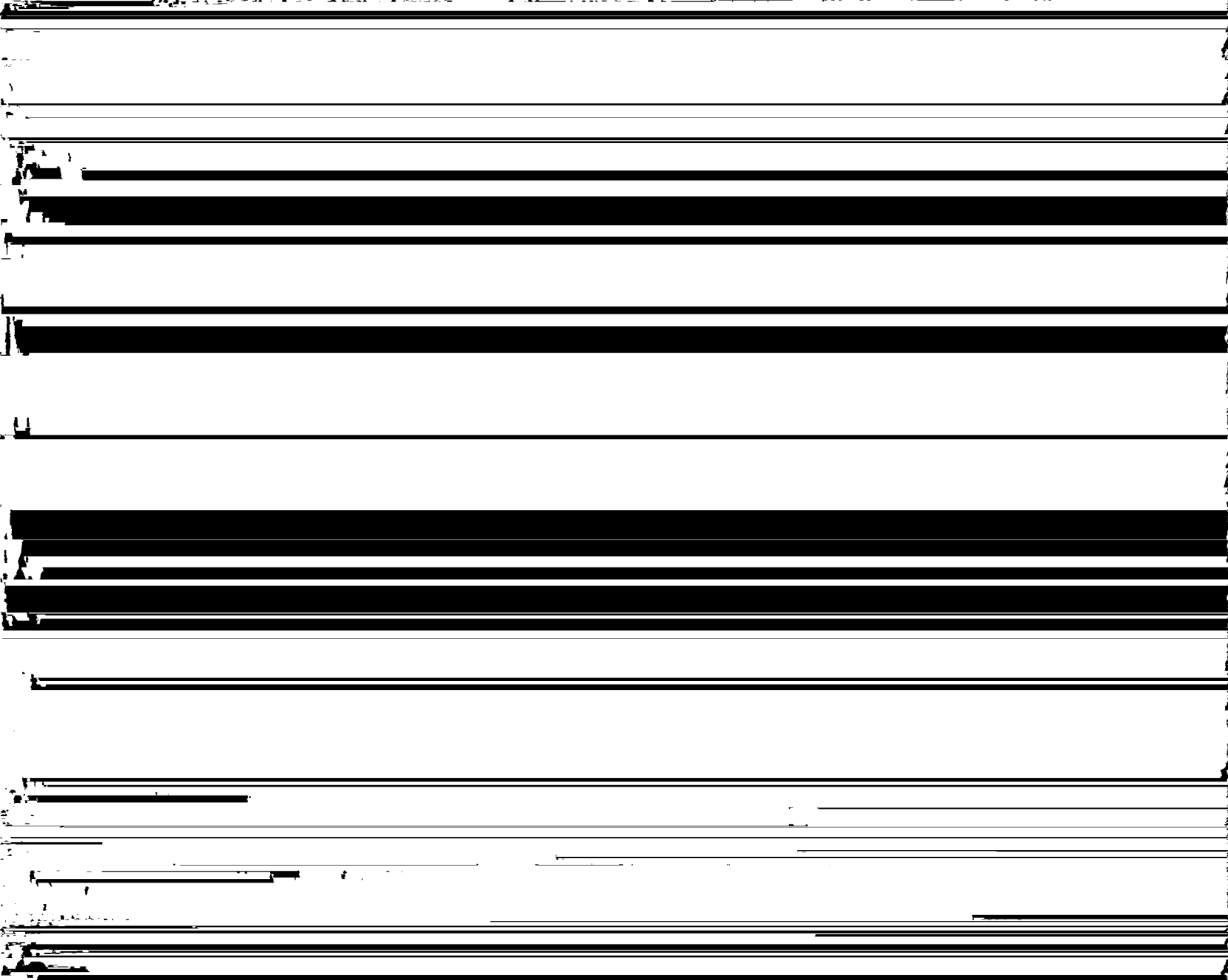
Page 2.

Mr. Harold Shumway, President

June 2, 1993

3. The claim of 400-500 people being involved in the "Committees" efforts, lacks substantiation. The committee appears to be overstating their support and some of the sub-groups do not even exist to my knowledge. Further, Flying E Ranch, Rancho de los Caballeros, Kay El Bar Ranch and Country Club Acres are not even within the town limits. The "committee" appears to be exaggerating their influence.

4. The characterization of the Town Council's vote as "unanimous with those voting" does not reflect the actual situation. Of the seven council members present, only four voted for



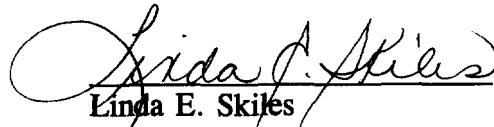
## CERTIFICATE OF SERVICE

I, Linda E. Skiles, Office Administrator of the law firm of Shainis & Peltzman, do hereby certify that copies of the foregoing document were mailed this 7th day of June, 1993, to the offices of the following:

Mr. Michael C. Ruger \*  
Chief, Allocations Branch  
Federal Communications Commission  
Mass Media Bureau  
Room 8322  
2025 M Street, N. W.  
Washington, D. C. 20554  
1800D5

Vulture Peak Restoration Group  
c/o Marlin J. Gaynes, Esq.  
Wilkes, Artis, Hedrick & Lane, Chartered  
Suite 1100  
1666 K Street, N.W.  
Washington, D. C. 20006

Wickenburg Town Council  
c/o Harry E. Craig, Esq.  
155 N. Tegu Street  
P. O. Box 1269  
Wickenburg, AZ 85358

  
Linda E. Skiles

\* Via Hand Delivery